To the Supreme Court of the United States.

BLACK AND WHITE TAXICAB AND TRANSFER CO., - - Petitioner,

VERSUS

BROWN AND YELLOW TAXICAB AND TRANSFER CO., - Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT.

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Black and White Taxicab and Transfer Company, respectfully shows to this Court as follows:

I. That on December 2nd, 1925, the respondent, Brown and Yellow Taxicab and Transfer Company, filed in the United States Court of the Western District of Kentucky, at Bowling Green, Kentucky, its bill of complaint against your petitioner, the appellant herein, and the Louisville & Nashville Railroad Company on the ground of diverse citizenship, claiming to be a Tennessee corporation, seeking to compel the Railroad to enforce a preferential and exclusive contract entered into between the respondent

Taxicab Company and said Railroad on December 1st, 1925, in which contract the Brown & Yellow Taxicab and Transfer Company was given the exclusive right and privilege to solicit passengers and baggage on the trains, and in the station and on the premises of the Railroad Station at Bowling Green, and was given exclusive parking space in Curd Street, a public street of the city of Bowling Green, all to the exclusion of your petitioner and others doing similar business, and further seeking to enjoin this petitioner from coming upon the Railroad Station or premises, or parking its cars in the exclusive space set apart to respondent.

II. That the Brown & Yellow Taxicab and Transfer Company had for many years been a Kentucky Corporation engaged in the transfer and taxicab business at Bowling Green and vicinity and on or about October 1st, 1925, it dissolved its Kentucky corporation and re-incorporated under the same name in the State of Tennessee, to thereby acquire a citizenship therein, and as a foreign corporation bring this action in the Federal Courts, to evade the state decisions against the validity of this character of contract, and to get the application of the Federal Court decisions which are in conflict with the Kentucky law on this subject.

III. That the respondent, Brown & Yellow Taxicab and Transfer Company, has no office in Tennessee nor any assets or business therein whatsoever, but all its business is transacted at Bowling Green as before its reincorporation in Tennessee, and this reincorporation is admittedly for the sole

purpose of bringing the federal action and evading the law of the State of Kentucky.

IV. That the Louisville & Nashville Railroad Company made no defense to the injunction suit in the federal court, but openly assisted and colluded with the plaintiff therein to get itself enjoined, and refused to join in appeal with this petitioner from the judgment enjoining it and this petitioner, which judgment was entered in the District Court on June 30th, 1926, and an appeal granted to the United States Circuit Court of Appeals, Sixth Circuit.

V. That the appeal from the District Court's judgment was promptly prosecuted, briefed and argued and on November 5th, 1926, the United States Circuit Court of Appeals affirmed the District Court's judgment enjoining this petitioner from exercising the privileges and rights granted appellee and enjoining the Railroad Company from allowing this petitioner the privileges and rights given appellee, and also affirming the District Court's judgment permitting the Railroad Company to set apart for exclusive parking space the part of Curd Street before referred to herein, and it is to review this judgment of affirmance that the writ of certiorari is respectfully asked herein on the following grounds:-

1. Because the jurisdiction of the Federal Court was obtained by collusion and fraud, and the reincorporation in Tennessee was solely and admittedly for the purpose of making a case cognizable in the Federal Court and thereby evade the settled decisions of the State of Kentucky, and this action

should be dismissed under Section 37 Judicial Code, and the lower court erred in not so doing.

2. Because the judgment is contrary to the decisions of the Court of Appeals of Kentucky repeatedly enunciated over a period of more than thirty years and which has become the settled policy and the law of the State, and the lower court erred in not following these decisions.

3. Because the contract in controversy is ultra vires, repugnant to the laws of Kentucky, and contrary and in violation of the Louisville & Nashville Railroad Company's charter powers and rights as construed by the Kentucky Court of Appeals in similar cases. The Railroad Company is a Kentucky corporation and is prohibited by the legislative act incorporating it from making any contract or regulation contrary to the laws of the State. The lower court erred in not following the construction of the charter as adopted by the Kentucky Court of Appeals.

4. Because the contract in controversy is directly violative of the express provisions of Section 214 Kentucky Constitution and the construction thereof as given by the Court of Appeals of Kentucky in cases involving similar exclusive contracts, and the lower court erred in not so deciding, and following the State court.

5. Because the judgment sought to be reversed permitted the Railroad Company to appropriate, grant and set apart to the respondent

exclusive use of a part of a public street of the city, in violation of the rights of petitioner and the public generally, which was error.

6. Because the judgment, if upheld, and the contract, enforced, will cause untold confusion, and conflict between appellee and other similar carriers, not only in Bowling Green, where conflicting suits in State and Federal Courts are now pending, but will upset the established and settled State policy and thereby permit advantages to an alien, denied the citizens of the State.

The Transcript of the Record of the Court of Appeals is filed herein as required by the rules of this Court.

Wherefore, your petitioner prays this Honorable Court will grant a writ of certiorari in this case to the Circuit Court of Appeals for the Sixth Circuit and bring up this case to this Honorable Court for such proceedings as this Court may deem just.

JOHN L. STOUT,
N. P. SIMS,
GUY H. HERDMAN,

Attorneys for petitioner,
Black & White Taxicab
& Transfer Company.

STATE OF KENTUCKY)
) ss.
COUNTY OF WARREN)

W. T. Renfrew, being duly sworn states that he is the president and chief officer of the petitioner here-

in Black & White Taxicab and Transfer Company, a corporation under the laws of the State of Kentucky, and that he has read the statements in the foregoing petition, and same are true to the best of his knowledge, information and belief, and states his knowledge is derived from the record in this case, and from what has taken place in his presence and hearing in the court when the case was heard.

W. T. RENFREW,

President Black & White
Taxicab Company.

Subscribed and sworn to before me by W. T. Renfrew, this 10th day of December, 1926.

LILLIAN MURRAY,
N. P. W. C. Ky.

My commission expires 15th day of March, 1930.

[SEAL:]

We hereby certify that we have examined the foregoing petition and in our opinion the petition is well founded, and that the case is one in which the prayer of the petitioner should be granted by this Court.

JOHN L. STOUT,
N. P. SIMS,
GUY H. HERDMAN,

Attorneys for petitioner.

Subscribed and sworn to before me by John L. Stout, N. P. Sims and Guy H. Herdman, this 11th day of December, 1926.

LUCILLE POLLARD,
N. P. W. Co. Ky.

My commission expires 5th day of October, 1930.

[SEAL:]



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